

UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket 0002 Re-Reissue)

COPY

In the Application of:	Neil Y. Gilbert)	
)	
Reissue of:	RE 36,377)	
)	Art Unit: 3727
Serial No.:	10/629,921)	
)	Examiner: N. Newhouse
Filed:	July 29, 2003)	
)	
For:	Collapsible Container)	

SUPPLEMENTAL (Second) REISSUE DECLARATION
37 C.F.R. §1.175

Mail Stop Reissue
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The undersigned, Neil Y. Gilbert, declares that:

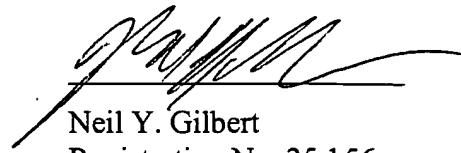
- (1) I am a patent attorney registered to practice before the United States Patent and Trademark Office (Registration No. 35,156).
- (2) I am a citizen of the United States.
- (3) I believe I am the original and first inventor of the subject matter claimed in the above-identified Reissue Application filed with this declaration.
- (4) I have reviewed and understand the contents of the present Reissue Application, including the claims, as filed herewith, including the enclosed Preliminary Amendment.
- (5) I acknowledge the duty to disclose to the Office all information known to be material to patentability as defined in 37 C.F.R. §1.56.
- (6) My residential address is: 7 Old Oak Way, Falmouth, ME, 04105.
- (7) My preferred correspondence address is: IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook ME 04092 (Tel. 207-856-8252).

- (8) I am the inventor and attorney responsible for drafting and prosecuting U.S. Patent No. Re. 36,377 that issued November 9, 1999 ("the '377 Patent"), the patent now sought to be reissued.
- (9) I am also the inventor and attorney responsible for drafting and prosecuting U.S. Patent No. 5,370,250 (now surrendered in favor of Re. 36,377).
- (10) The patent application that gave rise to the '377 Patent is directed towards a longitudinally collapsible container.
- (11) Upon filing the application that gave rise to the '377 Patent, on November 20, 1996, it was my belief that the claims properly covered the invention disclosed therein. Thus, when the '377 Patent issued, I believed that the '370 Patent was neither inoperative nor invalid.
- (12) I have now formed a belief that the '377 Patent is wholly or partly inoperative or invalid by reason of a defective specification and/or by reason of claiming more than I had a right to claim.
- (13) One error sought to be corrected by the present reissue application relates to the use of the term "bottom portion" in several of the '377 Patent claims when the proper antecedent basis should relate back to the term "base portion" (see, for example, amended claims 2, 3, 20, 26, 27, 36, 41, 46, 49, 55, and 60).
- (14) By amending the claims to replace all occurrences of "bottom portion" with "base portion", I believe the claims, as amended, are in better compliance with 35 U.S.C. §112.
- (15) Another error sought to be corrected by the present reissue application relates to claiming more than I had the right to claim. More specifically, US Patent No. 2,139,143 (Wiswell) was brought to my attention in a communication dated June 15, 2000, after the issuance of the '377 Patent on November 9, 1999. The communication (a copy is attached to this Declaration as Exhibit 1) included text and a claim chart comparing the disclosure of 2,139,143 to claim 27 of the '377 Patent.

- (16) While I do not agree with all statements in Exhibit 1, to the extent one or more of the '377 Patent claims read on the disclosure of 2,139,143, I believe all claims submitted in the present reissue application, as amended, are in full compliance with 35 U.S.C. and any error in claiming more than I had the right to claim is thereby corrected.
- (17) A second US patent, 5,226,551 (Robbins, III) was brought to my attention in the June 15, 2000 communication (Exhibit 1) and in a March 2, 2000 communication (Exhibit 2). While I do not agree with all statements in Exhibit 2, and I believe 5,226,551 is not "prior art" to the presently claimed invention, I also believe all claims submitted in the present reissue application are in full compliance with 35 U.S.C. and any error in claiming more than I had the right to claims is thereby corrected.
- (18) I believe all errors being corrected in the present reissue application arose without deceptive intention on my part.
- (19) The undersigned declares further that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements or the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

Date: 7/29/04


Neil Y. Gilbert
Registration No. 35,156

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EXHIBIT 1

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Raymond O. Linker, Jr.

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June 15, 2000

VIA UPS EXPRESS

Mr. John W. Olivo, Jr.
Ward & Olivo
382 Springfield Avenue
Summit, New Jersey 07901

Re: Danone Group
Reissue Patent RE 36,377 for *Collapsible Container*
Our Ref.: 3339-230

Dear Mr. Olivo:

We have carefully considered the issues raised in your April 6, 2000 letter. However, we remain of the opinion that the claims of your client's reissue patent RE 36,377 cannot properly be construed to cover the axially crushable containers of the Danone Group. The basis for this conclusion is explained more fully below.

The Containers At Issue

Your letter asserts that three containers of the Danone Group infringe the '377 patent: The Evian® bottle, illustrated in Exhibit B of your letter; the Dannon® bottle illustrated in Exhibit C; and the Volvic® bottle, illustrated in Exhibit D. You indicate that it is the "waved" or angular grooves and surfaces which you believe come within the claims of the '377 patent.

The Evian® bottle has a series of continuous circumferentially extending corrugations in a plane perpendicular to the cylindrical axis of the bottle which are designed to allow the bottle to be crushed axially. In addition, above and below these corrugations are a series of random, discontinuous angularly extending segmental grooves of varying length and width and angular direction. These segmental grooves are provided for ornamentation and are not intended for collapsing the bottle.

In the Dannon® bottle, the upper portion is provided with continuous circumferentially extending corrugations similar to those in the Evian bottle and with the same purpose of allowing the bottle to be crushed axially. The lower portion of the bottle

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includes a series of six continuous circumferential corrugations or grooves which follow a wavy (up-and-down) pattern around the bottle, while varying in width. Also, small segmental "wave-shaped" grooves are provided above the continuous corrugations for ornamentation.

The Volvic® bottle illustrated in Exhibit D is not a cylindrical bottle, but a rectangular bottle with rounded corners. The upper portion of the bottle (behind the label) has continuous circumferentially extending grooves similar to those described above. In the lower portion are a series of discontinuous wavy shaped grooves.

The Claims At Issue

Your letter specifically identifies independent claims 27, 41 and 55 as being infringed. We will deal with these claims in more detail later.

As to independent claim 1 or any of the other original claims of the '377 patent, it is not clear whether you still contend that any of these claims cover the bottles in question, nor is it clear whether you are asserting that dependent claims 21 - 26, which were added in the reissue, are infringed.

As to the original claims, including claim 1, I have previously noted (in my October 21, 1996 letter to Mr. Gilbert) that all of the original claims require a collapsible helical portion. You disagree with our conclusion that the Danone bottles do not employ a collapsible helical portion. We believe that you are stretching the meaning of "helical" entirely too far in saying that the Evian®, Dannon® and Volvic® bottles as represented in Exhibits B, C and D have "helical portions". Specifically, the term "helical" according to the ordinary dictionary definition and according to the usage in the patent specification refers to a helix, i.e., something spiral in form. Indeed, according to the patent disclosure, the helical formation defines a screw thread which threadably engages the cup shown at 40 in drawings.

The segmental "waved" or angular grooves present in the Evian® bottle do not follow a helical or spiral pattern along the circumference of the bottle, nor do the uniform radius surface portions of the bottle which are disposed between such grooves follow a helical path. In the Dannon® bottle, the "wavy" grooves or corrugations located in the lower portion of the bottle are continuous in the circumferential direction, which is the antithesis of a spiral or helical path, and the uniform radius surface portions of the bottle between these grooves are likewise not helical. Furthermore, the "wavy" path of travel of the grooves causes them to move both up and down along their circumferential extent, which again is in conflict with the definition of "helical". Similar reasoning applies to the Volvic® container. In addition, as noted earlier, the Volvic® container is generally rectangular, not cylindrical and therefore the container surface is not "of generally uniform radius".

Mr. John W. Olivo, Jr.
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Independent Claims 27, 41 and 55

Independent claims 27, 41 and 55, and the claims which are dependent therefrom, are limited both by the prior art and by the original specification, and can therefore not be validly construed to cover the "waved" or angular structures present in the Danone bottles.

We note that a "waved" or "angled" or "angular" structure or pattern was never described in the original specification as a feature of the invention. The patent specification does not disclose or teach anything other than a continuous helical or spiral structure or pattern and there is nothing in the written description to suggest that the inventor contemplated that his invention embraces segmental angularly oriented grooves or surfaces, which are not continuous along the circumference of the bottle. Thus, to the extent that you seek to interpret the claims as being directed to such grooves or surfaces, which are not described in the specification, this runs afoul of the written description requirement of Section 112, first paragraph, as well as the statutory requirement that reissue claims must be for the same invention as that disclosed in the original patent, 35 U.S.C. § 251.

In our March 2, 2000 letter, we also brought to your attention prior art which we believe invalidates the reissue claims, but at the very least would limit the permissible scope of interpretation. The Robbins U.S. Patent 5,226,551 quite clearly shows in Figure 5 and describes in column 5, lines 62 through column 6, line 23 a structure which meets every limitation of independent claims 27, 41 and 55, as well as most of the dependent claims.

Your response is that the Robbins patent is not "prior art" because your client's invention predates the filing of the Robbins patent. For us to accept this contention, we would need to see proof of your client's conception of his invention, in the breadth of scope that you are now asserting, as well as proof of his diligence toward actual or constructive reduction to practice. In addition, we do not believe your client is entitled to rely upon the January 21, 1992 earlier filing date of the parent application, at least as to the added reissue claims.

We additionally draw your attention to Wiswell, U.S. Patent 2,139,143, copy enclosed, which discloses a collapsible container with angularly oriented grooves and with collapsible surface portions which function precisely as you have described for the Gilbert invention. A chart is enclosed showing how the Wiswell container meets every limitation of claim 27. The Wiswell reference is equally applicable to the other claims.

Mr. John W. Olivo, Jr.
June 15, 2000
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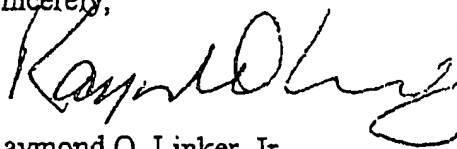
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Conclusion

For the reasons noted, it is our opinion that the claims of the '377 patent cannot be validly construed to cover the axially crushable containers of the Danone Group. If construed so broadly as to cover the Danone containers, the claims are invalid.

We believe that we have fully addressed the issues raised in your April 6, 2000 letter and that this should dispose of this matter. We would appreciate receiving confirmation from you to this effect.

Sincerely,



Raymond O. Linker, Jr.

ROL:sbs
Enclosure
CLT01/4428924v1

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Claims of RE 36,377	Corresponding structure in Wiswell US Pat. 2,129,143
27. A longitudinally collapsible container comprising	The container is longitudinally collapsible
a top portion and	top 20
a base portion	bottom 21
joined by a generally cylindrical side wall structure,	cylindrical side wall 22
said generally cylindrical side wall structure having a longitudinal central axis and	cylindrical side wall 22 has a longitudinal central axis
a collapsible surface portion,	The portions of the container side wall 22 located along the line 25 in Fig. 1 form a collapsible surface portion. In the collapsed state shown in Fig. 2, these portions have collapsed and folded as indicated at 25f
said collapsible surface portion having a collapsible surface of generally uniform radius extending generally parallel with respect to said central axis	The portions of the container side wall 22 located along the line 25 in Fig. 1 are also of generally uniform radius extending parallel to the central axis.
and being disposed between first and second longitudinally spaced groove portions,	first and second groove portions indicated at 23
wherein said first groove portion travels around a portion of the generally cylindrical side wall structure in an upward direction, away from the bottom portion and towards the top portion of the container.	The groove portions 23 travel around a portion of the side wall in an upward direction.

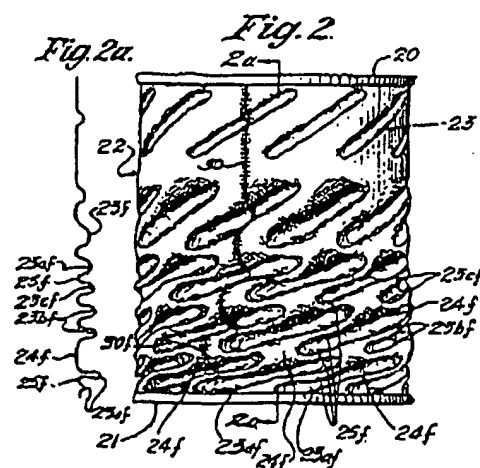
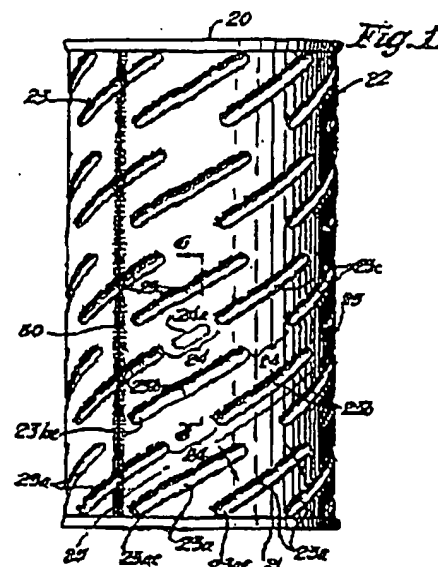


EXHIBIT 2

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March 2, 2000

John W. Olivo, Jr., Esq.
Ward & Olivo
382 Springfield Avenue
Summit, New Jersey 07901

Re: Reissue Patent RE 36,377 for Collapsible Container

Dear Mr. Olivo:

Your letter of December 2, 1999 addressed to Donna Besteiro of Danone Group has been referred to me, and I have been requested to respond on behalf of Danone Group. As you are aware, we previously considered this matter in 1996 with respect to Mr. Gilbert's U.S. Patent 5,370,250.

We have carefully considered the claims of Mr. Gilbert's Reissue Patent RE 36,377, its prosecution history, and applicable prior art in relation to the axially crushable containers used by Danone Group in the United States. It is our opinion that the claims of Mr. Gilbert's reissue patent do not cover any of the Danone Group containers. Accordingly, Danone has no interest in acquiring a license or other rights under Mr. Gilbert's patent.

Enclosed are drawings showing two types of bottles which Danone presently sells in the United States. Drawing 500-051-1 relates to an AQUAPENN bottle which is quite similar to the one shown in Danone's U.S. Patent 5,632,397 (copy enclosed). Drawing 500-018 relates to an Evian bottle which presents in its lower portion a series of six closed annular grooves that are undulating or "waved" to give a better appearance to the bottle.

In both cases, the bottle is axially crushable as shown on the label. After the bottle has been emptied, it can be irreversibly collapsed axially to compact the bottle to facilitate recycling. This is in contrast with the gradual control of the internal volume which is an essential feature of Mr. Gilbert's concept.

More specifically, you can readily see from the drawings and from actual bottles that the axial crushing is achieved through a series of corrugations having endless circular

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John W. Olivo, Jr., Esq.
March 2, 2000
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root portions or grooves (indicated by reference character 12 in Figure 1 of our client's '397 patent) and right cylindrical lands 11 between adjacent grooves. The grooves may additionally include formations (indicated at 62) which function as fold starters.

The original claims of Mr. Gilbert's '250 patent call for a "collapsible helical portion". We pointed out in our October 21, 1996 letter to Mr. Gilbert that the Evian bottle does not employ a collapsible helical portion in the side wall of the container. It should also be evident from the enclosed drawings that neither of the two designs have a collapsible helical portion.

The independent claims added in the reissue patent (Claims 27, 41 and 55) do not refer to a collapsible helical portion. However, they all clearly require a groove configuration which runs around the container upwardly, like a helix. For example, Claim 27 specifies that the groove portion travels around a portion of the generally cylindrical side wall structure in an upward direction away from the bottom portion and towards the top portion of the container. Similar language is present in the other independent claims.

The corrugations provided in the Danone containers in question have continuous horizontal circumferential grooves. The grooves do not travel around the side wall in an upward direction. This configuration is clearly outside of the scope of the claims.

We note from the prosecution history of the reissue application that the Patent and Trademark Office rejected the claims of the reissue patent as anticipated by the horizontal corrugations shown in Estes U.S. Patent 4,610,366, and Mr. Gilbert attempted to distinguish the Estes '366 patent by arguing that in Estes the root of the corrugation does not travel around the bottle in an upward direction. If Mr. Gilbert seeks to construe his claims so broadly as to cover continuous horizontal corrugations of the type used by Evian, then the claims would fail to distinguish over the Estes '366 patent.

We also direct your attention to the enclosed Robbins U.S. Patent 5,226,551, which in Figure 5 and column 5, lines 62 through column 6, line 23, discloses a collapsible container having a cylindrical wall structure and a collapsible surface 28 of generally uniform radius extending parallel to the central axis of the container, and being disposed between longitudinally spaced grooved portions 44 travelling around a portion of the cylindrical wall structure in an "upward" direction. We note that this patent was not considered by the Examiner in his examination of the reissue application. It appears to us that the cylindrical wall structure of Figure 5 is similar, if not identical, to what is claimed in the added reissue claims.

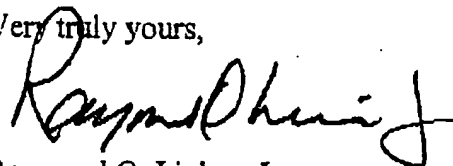
For the reasons noted, we believe it is abundantly clear that the claims of Mr. Gilbert's reissue patent cannot properly be construed to cover the axially crushable containers of the Danone Group, and Danone sees no basis for acquiring rights under Mr. Gilbert's patent.

John W. Olivo, Jr., Esq.
March 2, 2000
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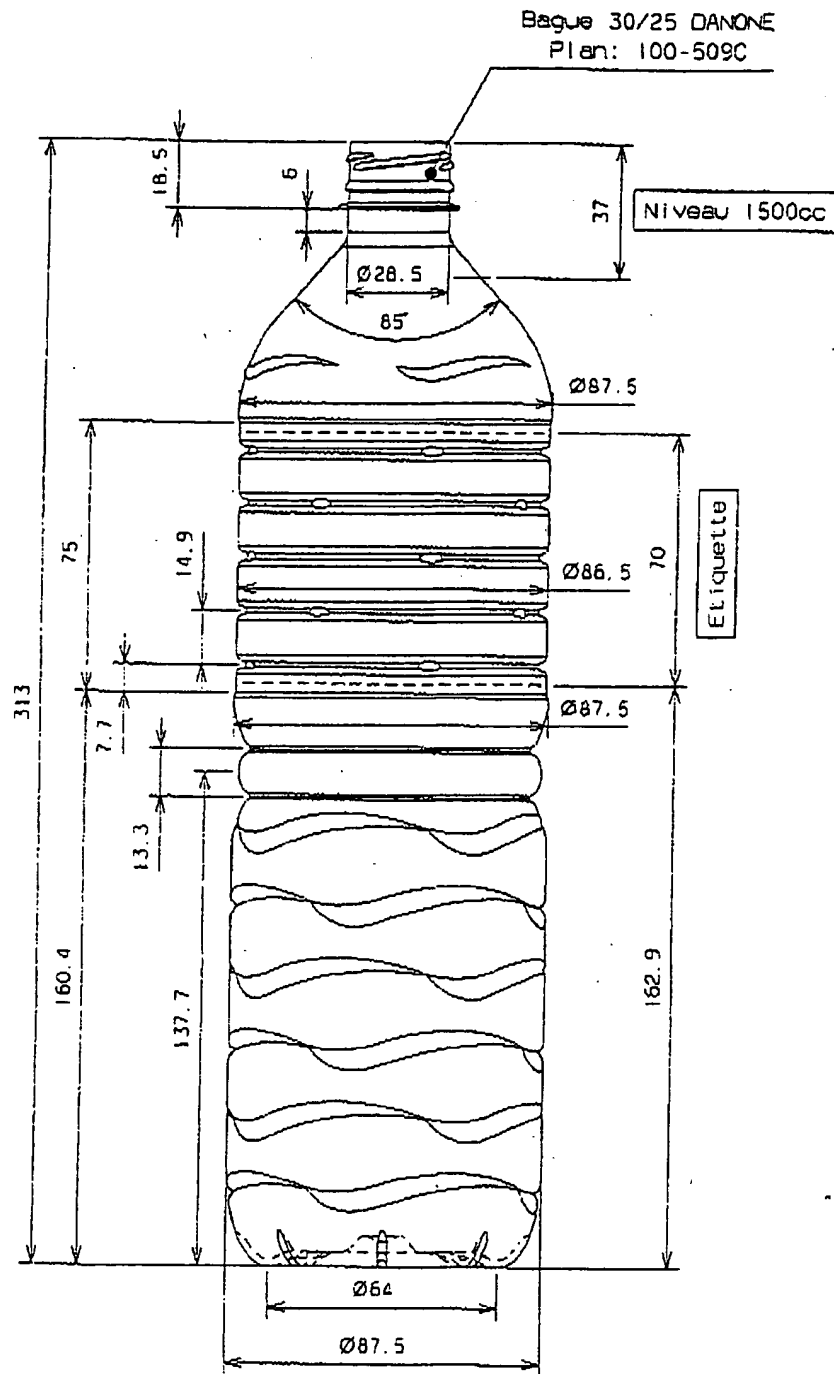
If you have any questions about our analysis or conclusions, please feel free to contact me.

Very truly yours,

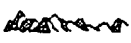


Raymond O. Linker, Jr.

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Enclosures
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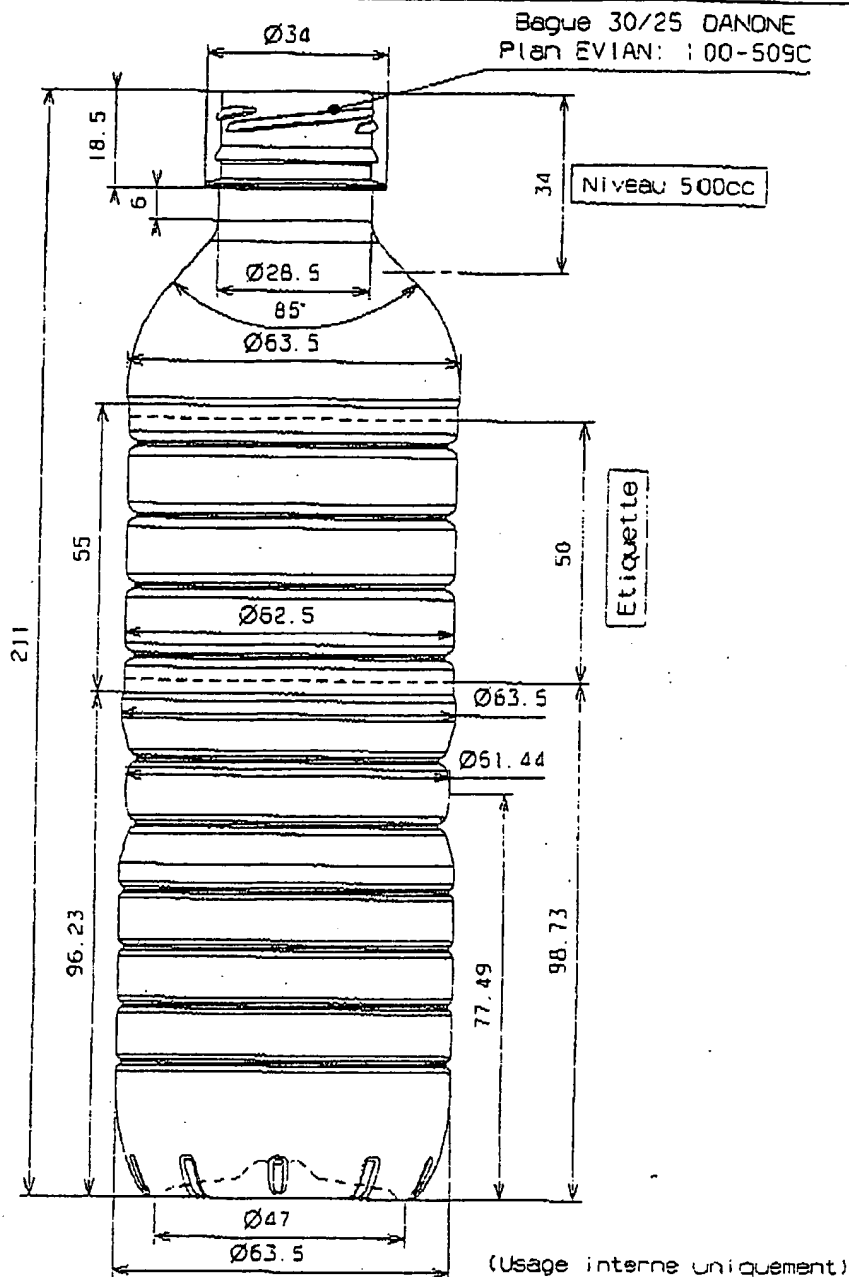
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22/02/99
Tiré le:
22 FEVRIER 1999

SPECIFICATIONS TECHNIQUES

BOUTEILLE 50CL AQUAPENN

PLAN DE DETAIL: 500-051

Ech: 0.9 | PLAN N° 500-051-1